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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

16 Cr. 91 (PKC)

5 SCOTT TUCKER and  
6 TIMOTHY MUIR,

Trial

7 Defendants.

-----x

8 New York, N.Y.  
9 October 13, 2017  
9:35 a.m.

10 Before:

11 HON. P. KEVIN CASTEL

12 District Judge  
13 and a jury

14 APPEARANCES

14 JOON H. KIM  
15 Acting United States Attorney for the  
16 Southern District of New York  
17 BY: NIKETH V. VELAMMOOR  
18 HAGAN C. SCOTTEN  
19 SAGAR K. RAVI  
20 Assistant United States Attorneys

18 FREEMAN NOOTER & GINSBERG  
19 Attorneys for Defendant Tucker

20 BY: LEE A. GINSBERG  
21 NADJIA LIMANI

-and-

21 STAMPUR & ROTH

22 BY: JAMES M. ROTH

22 BATH & EDMONDS, P.A.  
23 Attorneys for Defendant Muir

24 BY: THOMAS J. BATH

-and-

25 BEVERLY VAN NESS

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1 (Trial resumed)

2 THE COURT: Please remain standing for our jurors.

3 (Jury present)

4 THE COURT: Please be seated.

5 Good morning, ladies and gentlemen. I hope you had a  
6 pleasant evening, and congratulations to the New York Yankees  
7 on last night's win.

8 I'm going to pick up where I left off, and I'm going  
9 to begin with Count One, which is the charge of conspiracy to  
10 collect unlawful debts. You're going to see that I'm going to  
11 spend some time on this count because some of the terms that  
12 will apply to some of the other counts will apply here and now,  
13 and those definitions will apply to the later counts and I  
14 won't have to repeat them for you. That's why this first count  
15 will take a little bit longer than the other counts.

16 Count One charges that defendants Tucker and Muir  
17 agreed together and with others to conduct or participate in  
18 the conduct of the affairs of an enterprise through the  
19 collection of an unlawful debt. The indictment calls this  
20 enterprise the Tucker Payday Lending Organization. To find a  
21 defendant guilty of Count One, the government must prove beyond  
22 a reasonable doubt the following elements.

23 Now, I'm going to go through each of these, so I'm  
24 just going to give them to you first and then we'll talk about  
25 each one.

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1 First, that the charged conspiracy existed during the  
2 period alleged in the indictment;

3 Second, that the defendant intentionally joined and  
4 participated in this conspiracy at some point during its  
5 existence.

6 Now, these first two elements will be applied to all  
7 three charged conspiracies, except where I tell you otherwise.  
8 The next four elements describe the alleged illegal objects of  
9 the conspiracy charged in Count One.

10 The third element is that the enterprise alleged in  
11 the indictment, referred to as the Tucker Payday Lending  
12 Organization, existed;

13 Fourth, that the Tucker Payday Lending Organization  
14 affected interstate commerce;

15 Fifth, that the defendant was employed by or  
16 associated with the Tucker Payday Lending Organization; and

17 Sixth, that the defendant willfully and knowingly  
18 conspired with at least one other person to participate in the  
19 conduct of the affairs of that enterprise through the  
20 collection of an unlawful debt.

21 Count One, the first element.

22 The first element requires the government to prove  
23 beyond a reasonable doubt the existence of a conspiracy. A  
24 conspiracy is an agreement, or an understanding, by two or more  
25 persons to accomplish one or more unlawful objectives by

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1 working together. In this case, the government alleges that  
2 the unlawful purpose of the conspiracy was to operate an  
3 enterprise engaged in the collection of an unlawful debt.

4 To prove that a conspiracy exists, the government must  
5 prove that two or more people explicitly or implicitly came to  
6 an understanding to achieve the unlawful object charged in the  
7 count. It is not necessary for you to find that the agreement  
8 was ever expressed orally or in writing, but the government  
9 does have to prove that there was a mutual understanding  
10 between at least two people.

11 The indictment charges that the conspiracy lasted from  
12 in or about 1997 until at least in or about August 2013. It is  
13 not necessary for the government to prove that the conspiracy  
14 lasted throughout the entire period alleged, but only that it  
15 existed for some period within that time frame.

16 The second element that the government has to prove  
17 beyond a reasonable doubt is that each defendant intentionally  
18 joined the conspiracy, either at the outset or at some later  
19 point. To prove this element, the government must prove beyond  
20 a reasonable doubt that the defendant knowingly and willfully  
21 joined the conspiracy for the purpose of furthering its  
22 unlawful object, which is the collection of an unlawful debt.

23 Knowingly means to act consciously and voluntarily,  
24 rather than by mistake or accident. Willfully means to act  
25 deliberately and with a purpose to do something that the law

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1 forbids. The defendant need not have known that he was  
2 breaking any particular law, but he must have been aware of the  
3 generally unlawful nature of his act. The question of whether  
4 a person acted willfully and knowingly is a question of fact  
5 for you to determine, like any other fact question. This  
6 question involves the defendant's state of mind.

7 It is not necessary that a defendant be fully informed  
8 of all the details of the conspiracy, or of all of its  
9 participants. He need only know one other member of the  
10 conspiracy. He can join the conspiracy at any point and need  
11 not have received any benefit in return. On the other hand,  
12 mere association between the defendant and a conspirator does  
13 not make the defendant a member of the conspiracy, even if he  
14 knows that the conspiracy exists. In other words, knowledge  
15 and association are not enough; the defendant must have  
16 intentionally participated in the conspiracy with the purpose  
17 of helping to achieve its unlawful purpose.

18 Once you find that a conspiracy existed and that the  
19 defendant was a member, you may take into account against that  
20 defendant any acts or statements made by any of his  
21 coconspirators, even if such acts or statements were not made  
22 in the presence of the defendant or were made without his  
23 knowledge.

24 Once a conspiracy is formed, it is presumed to  
25 continue until either its objective is accomplished, or until

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1 there is some affirmative act of termination by the members.  
2 Similarly, once a person is found to be a member of a  
3 conspiracy, he is presumed to continue as a member of that  
4 conspiracy until the conspiracy is terminated, unless it is  
5 shown by some affirmative proof that the person withdrew and  
6 disassociated himself from it.

7 The instructions that I have given you on the  
8 definition of conspiracy, the existence of a conspiracy and  
9 membership in a conspiracy apply to Count One as well as to the  
10 two other conspiracies that I will talk to you about: the  
11 conspiracy to commit wire fraud and the conspiracy to commit  
12 money laundering.

13 Now, the objects of each of the conspiracies are  
14 different, and that's what I'm going to talk about next.

15 The next four elements relate to the object of the  
16 conspiracy in Count One.

17 The third element is that the government must prove  
18 beyond a reasonable doubt the existence of an enterprise that  
19 the indictment calls the Tucker Payday Lending Organization.  
20 The alleged purpose of this enterprise was to enrich its  
21 leaders, members and associates through the collection of  
22 unlawful debt. The indictment further charges that the  
23 enterprise was in the business of lending money at rates that  
24 were unlawful under state usury laws, and that the rates of  
25 interest charged were at least twice the maximum enforceable

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1 rates of interest.

2 I'll talk more about usury and maximum enforceable  
3 rates of interest and rates of interest a little later in the  
4 charge.

5 An enterprise does not have to have a particular name,  
6 or for that matter, have any name at all. Nor must it be  
7 registered or licensed as an enterprise. It does not have to  
8 be a commonly recognized legal entity, such as a corporation or  
9 a partnership. It may be a group of people informally  
10 associated together for a common purpose of engaging in a  
11 course of conduct. In addition to having a common purpose,  
12 this group of people must have a core of personnel who function  
13 as a continuing unit.

14 The enterprise must continue to exist in substantially  
15 similar form throughout the period charged. This does not mean  
16 that the membership must remain exactly identical, but the  
17 enterprise must have a recognizable core that continues during  
18 a substantial time period within the time frame charged in the  
19 indictment.

20 The fourth element the government must prove beyond a  
21 reasonable doubt is that the Tucker Payday Lending Organization  
22 was engaged in or had an effect upon interstate commerce.  
23 Interstate commerce includes the movement of goods, services,  
24 money and individuals between states.

25 The effect upon interstate commerce need not be

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1 substantial. Nor is it necessary that the effect on interstate  
2 commerce have been an adverse or negative effect.

3 It is not necessary to prove that the acts of the  
4 defendant you are considering affected interstate commerce as  
5 long as the acts of the Tucker Payday Lending Organization  
6 itself had such an effect, if you have had that there was such  
7 an enterprise.

8 Finally, the government is not required to prove that  
9 the defendant knew he was affecting interstate commerce. All  
10 that is necessary is that you find beyond a reasonable doubt  
11 that the Tucker Payday Lending Organization engaged in or  
12 affected interstate commerce in some minimal way.

13 The fifth element the government must prove beyond a  
14 reasonable doubt with respect to Count One is that the  
15 defendant you are considering was associated with or was  
16 employed by the Tucker Payday Lending Organization.

17 It is not required that the defendant you are  
18 considering have been associated with or employed by the  
19 enterprise for the entire time that the Tucker Payday Lending  
20 Organization existed. But the government is required to prove  
21 beyond a reasonable doubt that at some time during the period  
22 charged in the indictment, the defendant you are considering  
23 was associated with or employed by the Tucker Payday Lending  
24 Organization.

25 The government must also show that the defendant's



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1 association with the Tucker Payday Lending Organization was  
2 knowing -- that is, made with knowledge of the existence of the  
3 Tucker Payday Lending Organization through a general awareness  
4 of some of its purposes, activities and personnel. A person  
5 cannot be associated with or employed by an enterprise if he  
6 does not know of the enterprise's existence or the nature of  
7 its activities.

8 The sixth and final element the government must prove  
9 beyond a reasonable doubt with respect to Count One is that the  
10 defendant willfully and knowingly agreed to participate,  
11 directly or indirectly, in the affairs of the Tucker payday  
12 organization through collection of an unlawful debt.

13 "Usury" is the name the law gives to lending money at  
14 an illegally high rate of interest. For the purpose of this  
15 case, an "unlawful debt" means a debt that is unenforceable  
16 under state law because of the laws relating to usury, and  
17 which was incurred in connection with the business of lending  
18 money at a rate usurious under state law, where the usurious  
19 rate is at least twice the enforceable rate under state law.

20 Usury laws can differ from one state to another, as  
21 can enforceable rates of interest. In New York, the highest  
22 enforceable rate of interest on consumer loans is 25 percent  
23 per year, and loans above that rate are usurious and  
24 unenforceable. So as to New York, the collection of a consumer  
25 debt by a business engaged in lending money that carries an

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1 annual interest rate of 50 percent or more is the collection of  
2 an unlawful debt. As you can see in that example, a rate of 50  
3 percent is twice the highest enforceable rate of 25 percent.

4 Some states, including Connecticut, Maryland,  
5 Massachusetts, Montana, New Hampshire, New Jersey,  
6 Pennsylvania, North Carolina, Ohio, Vermont and Washington,  
7 D.C., have rates of interest different or even higher than New  
8 York, but none of these states allow the enforcement of a  
9 consumer loan with a rate of interest greater than 36 percent.  
10 So in these states, the collection of a consumer loan by a  
11 business engaged in money lending that carries an annual  
12 interest rate of 72 percent -- that's two times 36 -- would be  
13 an unlawful debt.

14 The government is not required to prove that the  
15 defendant knew what the usury rates were in the states that the  
16 borrowers lived. For example, in the case of a New York  
17 borrower, the government does not need to prove that the  
18 defendant you are considering knew that New York's highest  
19 enforceable rate of interest on consumer loans was 25 percent.  
20 Nor does the government have to prove that a defendant knew the  
21 enforceable rate of interest in any other state. In this case,  
22 ignorance of the specific terms of any law is no excuse to the  
23 charged conduct. The government can meet its burden on the  
24 "willfully" and "knowingly" element by proving that a defendant  
25 acted deliberately, with knowledge of the actual interest rate

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1 charged on the loan. It may also meet its burden by showing a  
2 defendant acted deliberately, with an awareness of the  
3 generally unlawful nature of the loan, and also that it was the  
4 practice of the business engaged in lending money to make such  
5 loans.

6 The focus of the sixth element is on the defendant's  
7 agreement to participate in the objective of the Tucker Payday  
8 Lending Organization to collect an unlawful debt. To prove the  
9 defendant's agreement, the government need not prove that the  
10 defendant you are considering actually engaged in the  
11 collection of unlawful debt or even agreed to engage in the  
12 collection of an unlawful debt, as long as the government  
13 proves that he participated in some manner in the overall  
14 objective of the conspiracy.

15 For the purpose of Count One, the government does not  
16 have to prove that the defendant himself committed any  
17 particular act concerning the collection of debt. The  
18 government only has to prove that the defendant entered into  
19 the charged conspiracy and participated in the conspiracy  
20 knowing that he, or any of his coconspirators, would engage in  
21 the collection of unlawful debt.

22 That completes Count One, ladies and gentlemen. Let's  
23 stand up and stretch and take a deep breath. OK.

24 Counts Two through Four of the indictment charge the  
25 defendants with substantive violations of law. It is a federal

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1 crime for any person who is employed by or associated with an  
2 enterprise that is engaged in or affects interstate commerce to  
3 conduct or to participate in the conduct of the affairs of that  
4 enterprise through the collection of an unlawful debt.

5 In order to find the defendant guilty of a substantive  
6 violation, you must find that the government proved each of the  
7 following five elements beyond a reasonable doubt:

8 First, that the enterprise alleged in the indictment,  
9 referred to as the Tucker Payday Lending Organization, existed;

10 Second, that the Tucker Payday Lending Organization  
11 affected interstate commerce;

12 Third, that the defendant was associated with or  
13 employed by the Tucker Payday Lending Organization;

14 Fourth, that the defendant willfully and knowingly  
15 engaged in the collection of unlawful debt; and

16 Fifth, that the defendant conducted or participated in  
17 the conduct or the affairs of the Tucker Payday Lending  
18 Organization through the collection of unlawful debt.

19 As you have seen, the first, second and third elements  
20 of the substantive offenses are identical to the third, fourth  
21 and fifth elements of the conspiracy offense charged in Count  
22 One. With regard to these elements, you should follow the  
23 instructions that I've given you with regard to Count One.

24 The principal difference between Count One and Counts  
25 Two through Four relate to the fourth and fifth elements

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1 included in Counts Two through Four. As I have instructed you  
2 in the conspiracy count, the defendant you are considering need  
3 only have conspired or agreed to participate in the conduct of  
4 the affairs of the Tucker Payday Lending Organization, knowing  
5 that he, or any of his coconspirators, agreed to the collection  
6 of unlawful debt. But under Counts Two through Four, which are  
7 the substantive counts, you cannot convict the defendant you  
8 are considering unless you find that he actually conducted or  
9 participated in the conduct of the Tucker Payday Lending  
10 Organization, directly or indirectly, through the collection of  
11 unlawful debt.

12 The fourth element, then, on Counts Two through Four  
13 that the government must prove beyond a reasonable doubt is  
14 that the defendant willfully and knowingly engaged in the  
15 collection of unlawful debt. Willfully, knowingly and  
16 unlawfully have the same meaning on which I have instructed you  
17 previously.

18 For each of Counts Two, Three and Four, the indictment  
19 alleges five specific unlawful debts that the defendant engaged  
20 in collecting. The government does not need to prove the  
21 existence of two or more collections of unlawful debt forming a  
22 pattern. Rather, each individual instance of collection of an  
23 unlawful debt constitutes a separate substantive violation.  
24 You must, however, unanimously agree that the government has  
25 proven beyond a reasonable doubt that the defendant engaged in

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1 collecting at least one particular debt named in a count before  
2 you may convict the defendant on that count.

3 The fifth element on Counts Two through Four is that  
4 the defendant conducted or participated in the conduct of the  
5 affairs of the Tucker Payday Lending Organization, directly or  
6 indirectly, through the collection of unlawful debt.

7 It is not enough that there be an enterprise and that  
8 the defendant engaged in the collection of unlawful debt. More  
9 is required. There must be a meaningful connection between the  
10 defendant engaging in the collection of unlawful debt and the  
11 affairs of the enterprise. The defendant must have conducted  
12 or participated in the enterprise by collecting or aiding in  
13 the collection of unlawful debt. It is not necessary, however,  
14 that the collection of unlawful debt directly furthers the  
15 enterprise's activities. It is enough that the defendant's  
16 collection of unlawful debt was related to the enterprise's  
17 activities.

18 The fifth element also requires that the defendant  
19 have some role in the operation, direction or management of the  
20 enterprise. To conduct or participate in the conduct of the  
21 enterprise means that the defendant must have played some part  
22 of the operation or management of the enterprise. The  
23 government is not required to prove that a defendant was a  
24 member of upper management, and an enterprise is operated not  
25 only by those in upper management, but also by those lower down

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1 in the enterprise who act under the direction of upper  
2 management. It is sufficient if you find that defendant  
3 provided substantial assistance to those who conducted the  
4 enterprise and thereby was involved in playing a part in the  
5 direction of the affairs of the enterprise through collection  
6 of unlawful debt.

7 Now, the defendant you are considering may be  
8 convicted on Counts Two through Four if he aided and abetted --  
9 aided and abetted -- others in committing these crimes.

10 The aiding and abetting statute provides that:

11 "Whoever commits an offense against the United States  
12 or aids, abets, counsels, commands, induces or procures its  
13 commission, is punishable as a principal."

14 It is not necessary for the government to show that  
15 the defendant you are considering himself physically committed  
16 the crime with which he is charged in order for you to find the  
17 defendant guilty. If the government proves beyond a reasonable  
18 doubt that the defendant you are considering was an aider or  
19 abettor of the crime charged, you should find the defendant  
20 guilty of that crime.

21 A person who aids or abets another to commit an  
22 offense is just as guilty of that offense as if he committed it  
23 himself. No one can be convicted of aiding and abetting the  
24 criminal acts of another if no crime was committed by the other  
25 person in the first place.

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1           In order to aid or abet another to commit a crime, it  
2           is necessary that the defendant willfully and knowingly  
3           associate himself in some way with the crime, and that he  
4           willfully and knowingly participate in the crime by doing some  
5           act to help make the crime succeed.

6           The definitions of "willfully" and "knowingly" that I  
7           have previously given apply here.

8           To establish that a defendant participated in the  
9           commission of a crime, the government must prove that the  
10          defendant engaged in some affirmative conduct or overt act for  
11          the specific purpose of bringing about that crime.

12          The mere presence of a defendant where a crime is  
13          being committed, even coupled with knowledge by the defendant  
14          that a crime is being committed, or merely associating with  
15          others who are committing a crime, is not sufficient to  
16          establish aiding and abetting. One who has no knowledge that a  
17          crime is being committed or is about to be committed but  
18          inadvertently does something that aids in the commission of the  
19          crime is not an aider or abettor. An aider or abettor must  
20          know that the crime is being committed and act in a way which  
21          is intended to bring about the success of the criminal venture.

22          I will now move to the second way that a defendant may  
23          be found guilty of aiding and abetting the crimes charged in  
24          Counts Two through Four, and that is by willfully causing the  
25          commission of a crime.



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1           What does the term "willfully causing" mean? It does  
2 not mean that the defendant in question needs to have  
3 physically committed the crime or supervised or participated in  
4 the actual commission of the crime charged in the indictment.  
5 The meaning of the term "willfully cause" can be found in the  
6 answers to the following questions:

7           First, did the defendant you are considering take some  
8 action without which the crime would not have succeeded?

9           Second, did the defendant you are considering intend  
10 that the crime would actually be committed by others?

11           If the government proves that the answers to both of  
12 these questions are yes, then the particular defendant is  
13 guilty of the crime charged just as if he had directly  
14 committed the crime. To find that defendant guilty under the  
15 provisions of the statute, the government need not prove that  
16 he acted through a guilty intermediary; that is, a defendant  
17 could be found guilty even if he acted through someone who is  
18 entirely innocent of the crime charged in the indictment.

19           You have heard evidence that defendant Scott Tucker  
20 received legal advice from lawyers, and you may consider that  
21 evidence in deciding whether Mr. Tucker acted willfully and  
22 with knowledge. However, the mere consultation with a lawyer  
23 is not itself a defense to criminal conduct.

24           In considering whether Mr. Tucker acted willfully and  
25 with knowledge as to Counts One through Four, you must consider

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1 whether Mr. Tucker honestly and in good faith sought the advice  
2 of a competent lawyer as to what he may lawfully do. This  
3 means that he sought and obtained legal advice regarding a  
4 proposed course of conduct before proceeding with that course  
5 of conduct. You must also consider whether Mr. Tucker fully  
6 and honestly presented all relevant facts to the lawyer, and  
7 whether he honestly followed such advice in good faith, relying  
8 on it and believing it to be correct. In short, you should  
9 consider whether, in seeking and obtaining advice from lawyers,  
10 Mr. Tucker intended for his acts to be lawful. If he did so, a  
11 defendant cannot be convicted of a crime that requires willful  
12 and unlawful intent, even if such advice were an inaccurate  
13 description of the law.

14 On the other hand, no defendant can willfully and  
15 knowingly violate the law and excuse himself from the  
16 consequences of his conduct by asserting that he followed the  
17 advice of a lawyer. Whether Mr. Tucker acted in good faith for  
18 the purpose of seeking guidance as to the specific acts in this  
19 case before engaging in those acts, whether he made a full and  
20 complete presentation of the facts to his lawyer, and whether  
21 he acted substantially in accordance with the advice received,  
22 are questions for you to determine.

23 You have heard reference during the trial to the term  
24 "tribal sovereign immunity." Tribal sovereignty means that  
25 federally recognized Indian tribes, like states, possess

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1 certain powers of self-government. Tribal sovereign immunity  
2 is a principle of federal law that protects federally  
3 recognized Indian tribes from being sued by states or others.  
4 It does not preclude suits by the federal government against a  
5 tribe. It limits the means by which a state can enforce some  
6 of its laws against a federally recognized tribe. Tribal  
7 sovereign immunity does not provide a tribe or its members with  
8 any rights to violate the law of any state, but it does limit a  
9 state's ability to enforce its laws against a tribe. The  
10 tribes mentioned in this case are immune from suit by any  
11 state, including under a criminal usury statute. Immunity,  
12 however, does not make the conduct of the tribe lawful.

13 That completes the instructions on Counts Two through  
14 Four. Let's stand up and stretch again, with the deep breath.

15 Count Five charges both defendants with conspiracy to  
16 commit wire fraud. To prove Count Five, the government must  
17 prove beyond a reasonable doubt two elements:

18 First, that the charged conspiracy to commit wire  
19 fraud existed during the period alleged in the indictment; and

20 Second, that the defendant intentionally joined and  
21 participated in this conspiracy at some point during its  
22 existence with knowledge of its unlawful objective.

23 The indictment alleges that the object of the  
24 conspiracy in Count Five was to commit wire fraud, and the wire  
25 fraud itself, the substantive count, is Count Six.

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1 I have instructed you previously on two elements of  
2 conspiracy, and you should follow those instructions. You must  
3 find that the conspiracy existed and that the defendant  
4 knowingly joined the conspiracy during the period of the  
5 conspiracy with knowledge of its unlawful object.

6 The period of the conspiracy is alleged to be from at  
7 least in or about 2004 up to and including in or about August  
8 2013.

9 Count Six of the indictment charges both defendants  
10 with violating the wire fraud statute. In order to prove a  
11 defendant guilty of wire fraud, the government must establish  
12 beyond a reasonable doubt each of the following three elements:

13 First, that on or about the times alleged in the  
14 indictment -- that is, from in or about 2004 through in or  
15 about August 2013 -- there was a scheme or artifice to defraud  
16 others of money or property by false or fraudulent pretenses,  
17 representations or promises;

18 Second, that the defendant you are considering  
19 willfully and knowingly devised or participated in the scheme  
20 or artifice to defraud with knowledge of its nature and with  
21 specific intent to defraud;

22 Third, in the execution of that scheme, the defendant  
23 you are considering used, or caused the use by others, of  
24 interstate wires as specified in the indictment.

25 The first element the government must prove beyond a

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1 reasonable doubt is the existence of a scheme or artifice to  
2 defraud others of money or property by means of false or  
3 fraudulent pretenses, representations or promises.

4 A "scheme or artifice" is simply a plan, device or  
5 course of conduct to accomplish an objective. "Fraud" is a  
6 general term. It is a term that includes all the possible  
7 means by which a person seeks to gain some unfair advantage  
8 over another person by false representations, false suggestion,  
9 false pretenses or concealment of the truth. The unfair  
10 advantage sought can involve money, property or other things of  
11 value.

12 Thus, a "scheme to defraud" is merely a plan to  
13 deprive another of money or property by trick, deceit,  
14 deception or swindle. In this case, the scheme to defraud is  
15 alleged to have been carried out by making false or fraudulent  
16 statements, representations, claims and documents. A  
17 statement, representation, claim or document is false if it is  
18 untrue when made and was then known to be untrue by the person  
19 making it or causing it to be made. A representation or  
20 statement is fraudulent if it was falsely made with the  
21 intention to deceive. Deceitful statements, half-truths or the  
22 concealment of material facts, when there is a duty to disclose  
23 them, may also constitute false or fraudulent statements. So,  
24 too, may the expression of an opinion not honestly held  
25 constitute a false or fraudulent statement.

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1           You may find that a scheme to defraud existed only if  
2           the government has proven beyond a reasonable doubt the  
3           existence of the scheme alleged in the indictment. A scheme to  
4           defraud need not be shown by direct evidence, but may be  
5           established by all the circumstances and facts in the case.

6           The false representations and pretenses involved in  
7           the scheme to defraud must be "material." A material fact is  
8           one which reasonably would be expected to be of concern to a  
9           reasonable and prudent person relying on the statement in  
10          making a decision. That means if you find a particular  
11          statement or omission to have been untruthful or misleading,  
12          before you can find that statement or omission to be material,  
13          you must also find that the statement or omission was one that  
14          would have mattered to a reasonable person in making such a  
15          decision.

16          In particular, you must find that the statement or  
17          omission was one that would have mattered to a reasonable  
18          person in some monetary way. Actual reliance by a person on  
19          the representations is not required. It is sufficient if the  
20          misrepresentation is one that is capable of influencing the  
21          person's decision and is intended by the defendant to do so.

22          If you find that the government has sustained its  
23          burden of proof that a scheme to defraud others of money or  
24          property did exist, as charged, you next should consider the  
25          second element.

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1           The second element of wire fraud that the government  
2 must establish beyond a reasonable doubt is that the defendant  
3 you are considering devised or participated in the fraudulent  
4 scheme willfully, knowingly and with the specific intent to  
5 defraud.

6           The words "devised" and "participated" are words that  
7 you are familiar with, and therefore, I do not need to spend  
8 much time defining them.

9           To devise scheme to defraud is to concoct or plan it.  
10 To participate in a scheme to defraud means to associate  
11 oneself with it with a view and intent toward making it  
12 succeed. While a mere onlooker is not a participant in a  
13 scheme to defraud, it is not necessary that a participant be  
14 someone who personally and visibly executes the scheme to  
15 defraud.

16           In order to satisfy this element, I remind you that it  
17 is not necessary for the government to establish that the  
18 defendant you are considering originated the scheme to defraud.  
19 It is sufficient if you find that a scheme to defraud existed,  
20 even if originated by another, and that the defendant, while  
21 aware of the scheme's existence, knowingly participated in it.

22           It is also not required that the defendant participate  
23 in or have knowledge of all of the operations of the scheme.  
24 The guilt of a defendant does not depend on how extensively he  
25 participated in the scheme, so long as he participated in the

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1 scheme with knowledge of its general scope and purpose.

2 It is not necessary that a defendant have participated  
3 in the alleged scheme from the beginning. A person who comes  
4 in at a later point with knowledge of the scheme's general  
5 operation, although not necessarily all of its details, and  
6 intentionally acts in a way to further the unlawful goals,  
7 becomes a member of the scheme and is legally responsible for  
8 all that may have been done in the past in furtherance of the  
9 criminal objective and all that is done thereafter.

10 As I previously noted, before a defendant may be  
11 convicted of the wire fraud charge, he must also be shown to  
12 have acted willfully and knowingly and with a specific intent  
13 to defraud. I have previously explained the meaning of  
14 willfully and knowingly, and you should apply those  
15 instructions here. For this count, however, the government  
16 must prove beyond a reasonable doubt that the defendant acted  
17 not only willfully and knowingly, but also with the specific  
18 intent to defraud others of money or property. To act with  
19 intent to defraud means to act willfully, and with the specific  
20 intent to deceive, for the purpose of causing some financial  
21 loss to another.

22 Direct proof of willfulness, knowledge and fraudulent  
23 intent is almost never available. Indeed, it would be a rare  
24 case where it could be shown that a person wrote or stated that  
25 as of a given time in the past he committed an act with



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1 fraudulent intent. Such direct proof is not required.

2 The ultimate facts of knowledge and criminal intent  
3 may be established by circumstantial evidence, based upon a  
4 person's outward manifestations, words, conduct, acts and all  
5 the surrounding circumstances disclosed by the evidence and the  
6 rational or logical inferences that may be drawn therefrom. In  
7 deciding whether the government has proven whether the  
8 defendant you are considering had an intent to defraud, you  
9 need not limit yourself to just what the particular defendant  
10 said, but you may also look at what the defendant did and what  
11 others did in relation to the defendant and the entirety of the  
12 surrounding circumstances.

13 The third and final element that the government must  
14 prove beyond a reasonable doubt as to the wire fraud is that  
15 the interstate wire facilities were used in furtherance of the  
16 scheme to defraud. The term "wire facilities" includes  
17 telephones, faxes, emails, radio and television. Here, the  
18 government contends that interstate wire facilities were used.

19 The "interstate" requirement means that the wire  
20 communication must pass between two or more states, as, for  
21 example, a transmission of computer signals from New York and  
22 another state, such as Kansas, Oklahoma or Nebraska.

23 It is not necessary for the defendant you are  
24 considering to be directly or personally involved in any wire  
25 communication, as long as the communication is reasonably

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1 foreseeable in the execution of the alleged scheme to defraud  
2 in which the particular defendant is accused of participating.

3 In this regard, it would be sufficient to establish  
4 this element of the crime if the evidence justifies a finding  
5 that the defendant caused the wires to be used by others, and  
6 this does not mean that the defendant himself must have  
7 specifically authorized others to execute a wire communication.  
8 When one does an act with knowledge that the use of the wires  
9 will follow in the ordinary course of business, or where such  
10 use of the wires can reasonably be foreseen, even though not  
11 actually intended, then he or she causes the wires to be used.

12 This wire communication requirement is satisfied even  
13 if the wire communication was done by a person with no  
14 knowledge of the fraudulent scheme, including the victim of the  
15 alleged fraud. The use of the wires need not itself be  
16 fraudulent. Stated another way, the wire communication need  
17 not contain any fraudulent representation or even any request  
18 for money. It is sufficient if the wires were used to further  
19 or assist in carrying out the scheme to defraud.

20 The government must establish beyond a reasonable  
21 doubt the particular use charged in the indictment. However,  
22 the government does not have to prove that the wire was used on  
23 the exact date charged in the indictment. It is sufficient if  
24 the evidence establishes beyond a reasonable doubt that the  
25 wire was used on a date reasonably near the date alleged in the

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1 indictment.

2 Let me add the following. Only the wire communication  
3 must be reasonably foreseeable, not its interstate component.  
4 Thus, if you find that the wire communication was reasonably  
5 foreseeable and the interstate wire communications actually  
6 took place, then this element is satisfied even if it was not  
7 foreseeable that the wire communication would cross state  
8 lines.

9 Now, with respect to Count Six, the indictment also  
10 charges the defendants with aiding and abetting wire fraud.  
11 The definition of aiding and abetting that I previously gave  
12 applies here.

13 (Continued on next page)  
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1           THE COURT: Since an essential element of wire fraud  
2 is an intent to defraud, it follows that good faith on the part  
3 of a defendant is a defense to that charge. A defendant has no  
4 burden of establishing a defense of good faith. The burden is  
5 on the government to prove fraudulent intent beyond a  
6 reasonable doubt, and proving fraudulent intent proves a lack  
7 of good faith.

8           Even false representations or statements, or omissions  
9 of material facts, do not amount to a fraud unless done with  
10 fraudulent intent. However misleading or deceptive a plan may  
11 be, it is not fraudulent if it was devised or carried out in  
12 good faith. An honest belief in the truth of the  
13 representations made by a particular defendant, and an honest  
14 belief that all material facts have been disclosed, is a  
15 complete defense, however inaccurate the statements may turn  
16 out to be.

17           In considering whether or not a particular defendant  
18 acted in good faith, you are instructed that a belief by the  
19 defendant you are considering, if such belief existed, that  
20 ultimately everything would work out so that no one would lose  
21 any money does not mean that the defendant acted in good faith.

22           No amount of honest belief on the part of the  
23 defendant you are considering that the scheme would ultimately  
24 aid others will excuse that defendant, if the defendant had the  
25 specific intent to harm the individuals by depriving them of

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1 accurate information that was material to their decisions about  
2 how to use their assets, even if the defendant sought only to  
3 deprive the individuals of accurate information for a limited  
4 period of time.

5 Acting with intent to defraud requires acting with a  
6 purpose to cause actual financial harm to another. Actual  
7 financial harm includes denying a person or entity access to  
8 money. If a defendant deliberately supplies materially false  
9 information in order to obtain money, but believes that no harm  
10 will ultimately occur to the person from which he obtained the  
11 money -- i.e., that the victim will be better off having  
12 entered a lending relationship with the defendant or his  
13 associates -- that belief that no harm will result, or even the  
14 fact that no harm does result, is no defense. Thus, if you  
15 find that the defendant you are considering intended to inflict  
16 harm by obtaining money fraudulently, you may find that the  
17 defendant acted with intent to defraud.

18 It is also unimportant whether a victim might have  
19 discovered the fraud had he or she probed further. If you find  
20 that a scheme or artifice to defraud existed, it is irrelevant  
21 whether you believe that a victim was careless, gullible, or  
22 even negligent.

23 Ladies and gentlemen, let's stand up and stretch, with  
24 a deep breath.

25 You are truly good-natured people that you can even

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1 muster a slight smile after listening to me at great length.

2 All right. Count Seven charges a conspiracy to commit  
3 money laundering. To prove Count Seven, the government must  
4 prove beyond a reasonable doubt:

5 First, that the charged conspiracy existed during the  
6 period alleged in the indictment;

7 Second, that the defendant intentionally joined and  
8 participated in the conspiracy at some point during its  
9 existence and with knowledge of its unlawful object.

10 I have previously instructed you on two elements under  
11 the law of conspiracy, and you should follow those instructions  
12 here. The period of the conspiracy to commit money laundering  
13 is alleged to be from at least in or about 2004 up to and  
14 including in or about August 2013. The indictment alleges that  
15 the money laundering conspiracy charged in Count Seven had two  
16 objects:

17 The first object of the conspiracy charged in Count  
18 Seven was to participate in a financial transaction that  
19 involves the proceeds of specified unlawful activity with the  
20 intent to promote the carrying on of that activity. The  
21 indictment charges a violation of that federal statute as a  
22 substantive crime in Count Eight. I will describe the elements  
23 of Count Eight in a little bit.

24 The second object of the conspiracy charged in Count  
25 Seven was to participate in a financial transaction that

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1 involves the proceeds of a specified unlawful activity, knowing  
2 that the transaction was designed to conceal or disguise the  
3 nature, location, source, ownership or control of those  
4 proceeds. The indictment charges violation of that federal  
5 statute as a substantive crime in Count Nine. I will describe  
6 the elements of Count Nine after discussing Count Eight.

7 The government need not prove that the defendant you  
8 are considering agreed to accomplish both objects in order to  
9 convict the defendant of the conspiracy to commit money  
10 laundering charged in Count Seven. Nor must you find that  
11 either object was actually accomplished. An agreement to  
12 accomplish either of the two objects is sufficient. However,  
13 the jury must all agree, unanimously agree on the specific  
14 object that the defendant you are considering agreed to try to  
15 accomplish.

16 Count Eight charges both defendants with committing  
17 the substantive crime of money laundering by engaging in  
18 financial transactions that involved the proceeds of illegal  
19 activity, specifically, the wire fraud charged in Count Six of  
20 the indictment, with the intent to promote the carrying on of  
21 further wire fraud transactions. In order to prove a defendant  
22 guilty of conspiring to commit this crime, the government must  
23 establish beyond a reasonable doubt the following elements:

24 First, that the defendant conducted or attempted to  
25 conduct a financial transaction, which I will define for you.

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1 That financial transaction must in some way or degree affect  
2 interstate commerce;

3 Second, that the defendant conducted or attempted to  
4 conduct the financial transaction with property or funds that  
5 involved the proceeds of some form of specified unlawful  
6 activity;

7 Third, that the defendant engaged in or attempted to  
8 engage in the transaction with knowledge that the transaction  
9 involved the proceeds of some form of unlawful activity; and

10 Fourth, to engage in the financial transaction with  
11 the intent to promote the carrying on of specified unlawful  
12 activity.

13 The first element that the government must prove  
14 beyond a reasonable doubt in Count Eight is that the defendant  
15 conducted or attempted to conduct a financial transaction  
16 involving property constituting the proceeds of specified  
17 unlawful activity, namely, wire fraud.

18 The term "conduct" includes the action of initiating,  
19 concluding, or participating in initiating or concluding a  
20 transaction.

21 A "transaction" includes a purchase, sale, loan,  
22 pledge, gift, transfer, delivery, or other disposition of  
23 property.

24 The term "financial transaction" means a transaction  
25 involving a financial institution which is engaged in, or the



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1 activities of which affect, interstate commerce in any way or  
2 degree, or a transaction which in any way or degree affects  
3 interstate commerce and involves the movement of funds by wire  
4 or other means, or involves one or more monetary instruments,  
5 or involves the transfer of title to any real property,  
6 vehicle, vessel or aircraft.

7 As I have previously instructed, the term "interstate  
8 commerce" means the movement of goods, services, money, and  
9 individuals between states.

10 The second element that the government must prove  
11 beyond a reasonable doubt is that the property involved in the  
12 financial transaction constituted the proceeds of some form of  
13 specified unlawful activity, the.

14 The term "proceeds" means any property derived from or  
15 obtained or retained, directly or indirectly through some form  
16 of unlawful activity, including gross receipts of such  
17 activity.

18 The term "specified unlawful activity" means any one  
19 of a variety of offenses defined by the statute. In this case,  
20 the government has alleged that the funds in question were the  
21 proceeds of wire fraud. I instruct that you, as a matter of  
22 law, wire fraud falls within the definition of "specified  
23 unlawful activity." However, it is for you to determine  
24 whether the funds were the proceeds of the unlawful activity  
25 charged in the indictment.

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1           The third element that the government must prove  
2 beyond a reasonable doubt on Count Eight is that the defendant  
3 engaged in or attempted to engage in a financial transaction  
4 with knowledge that the transaction involved the proceeds of  
5 some form of unlawful activity.

6           To satisfy this element, the government must prove  
7 that the defendant you are considering conducted or attempted  
8 to conduct a transaction knowing that the property involved in  
9 the transaction represented proceeds from some form, though not  
10 necessarily which form, of activity that constitutes a felony  
11 under state, federal, or foreign law. Thus, the government  
12 does not have to prove that the conspirators specifically knew  
13 that the property involved in the transaction represented the  
14 proceeds of the wire fraud alleged here. The government only  
15 has to prove that the defendant conducting or attempting to  
16 conduct the financial transaction knew that the transaction  
17 represented the proceeds of some illegal activity that was a  
18 felony.

19           I instruct you that, as a matter of law, in New York  
20 it is a felony to take or receive any money as interest on a  
21 loan at a rate exceeding 25 percent per year, although whether  
22 that occurred in this case is a matter of fact that you must  
23 determine for yourself.

24           The fourth element which the government must prove  
25 beyond a reasonable doubt is that the defendant you are

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1 considering engaged in or attempted to engage in the financial  
2 transaction with intent to promote the carrying on of specified  
3 unlawful activity, namely, wire fraud.

4 To act intentionally means to act willfully, not by  
5 mistake or accident, with the deliberate purpose of promoting,  
6 facilitating or assisting the carrying on of a wire fraud. If  
7 you find that the defendant acted with the intention or  
8 deliberate purpose of promoting, facilitating, or assisting in  
9 the carrying on of a wire fraud, then the fourth element is  
10 satisfied.

11 Count Nine charges both defendants with committing  
12 money laundering by engaging in financial transactions that  
13 involved the proceeds of wire fraud with the intent to conceal  
14 the nature, source, location, ownership or control of those  
15 proceeds. In order to prove the defendant you are considering  
16 guilty of this crime, the government must establish beyond a  
17 reasonable doubt:

18 First, that the defendant conducted or attempted to  
19 conduct a financial transaction;

20 Second, that the defendant conducted or attempted to  
21 conduct the financial transaction with property or funds that  
22 involved the proceeds of some form of specified unlawful  
23 activity;

24 Third, that the defendant engaged in or attempted to  
25 engage in the transaction with knowledge that the transaction

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involved the proceeds of some form of unlawful activity; and

Fourth, that the defendant engaged in or attempted to engage in the financial transaction knowing that the transaction was designed in whole or in part to conceal or disguise the nature, location, source, ownership or control of the proceeds of specified unlawful activity.

The first three of these elements are identical to the elements for the money laundering crime charged in Count Eight. Only the fourth element, regarding the purpose of the financial transaction, is different. I therefore am only going to provide additional instructions on that element.

With respect to the fourth element of the money laundering crime charged in Count Nine, the government must prove beyond a reasonable doubt that the defendant you are considering acted with knowledge that the transaction was designed to conceal or disguise the nature, location, source, ownership or control of the proceeds of the specified unlawful activity, namely, wire fraud. The terms I have just used have their everyday meaning.

If you find that the evidence establishes beyond a reasonable doubt that the defendant you are considering knew of the purpose of the transaction in issue, and that he or she knew that the transaction was either designed to conceal or disguise the true origin of the property in question, then this element is satisfied.

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1           However, if you find that the defendant knew of the  
2 transaction but did not know that it was either designed to  
3 conceal or disguise the true origin of the property in  
4 question, you must find that this element has not been  
5 satisfied and find the defendant not guilty on this count.

6           Proof that the defendant knew the purpose of the  
7 financial transaction was to conceal or disguise the location  
8 or ownership of the proceeds of specified unlawful activity may  
9 be established by proof that the defendant actually knew, or  
10 knew because of circumstantial evidence. In other words, you  
11 are entitled to find from the circumstances surrounding the  
12 financial transaction what the purpose of the activity was and  
13 that the defendant knew of that purpose.

14           Counts Eight and Nine of the indictment also charge  
15 the defendants with aiding and abetting money laundering crimes  
16 charged in those counts. I have previously instructed you on  
17 the law of aiding and abetting, and you should apply those  
18 instructions here.

19           Ladies and gentlemen, let's stand up and stretch, with  
20 a deep breath.

21           I now turn to the last counts, Counts Ten through  
22 Fourteen of the indictment that charge both defendants with  
23 violating a provision of federal law known as the Truth in  
24 Lending Act, often called "TILA." TILA requires a creditor to  
25 make certain disclosures to consumers at the outset of a

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Charge

1 transaction, and those disclosures must accurately reflect the  
2 terms of the legal obligations agreed upon by the parties.

3 To find the defendant you are considering guilty of  
4 this crime, you must find that the government proved beyond a  
5 reasonable doubt that the defendant you are considering  
6 willfully and knowingly gave false and inaccurate information  
7 under the Truth in Lending Act.

8 I will discuss each concept in turn. The terms  
9 "willfully" and "knowingly" have the same meaning I have  
10 previously explained to you. The terms "false" and  
11 "inaccurate" have their everyday meaning.

12 In this case, the government has alleged that the  
13 defendants materially understated the true cost of the loans  
14 extended by the Tucker Payday Lenders by disclosing false and  
15 inaccurate information with respect to the finance charges and  
16 total payments due under loans extended by the Tucker Payday  
17 Lenders. I instruct you as a matter of law that finance  
18 charges and total payments due under a loan are disclosures  
19 required under the Truth in Lending Act (TILA). Whether the  
20 disclosures were false or inaccurate, however, is a  
21 determination you must make.

22 In order to find the defendant you are considering  
23 guilty in this matter, you must also determine that the false  
24 or inaccurate disclosures were material, meaning that the  
25 degree of falsehood or inaccuracy was such that it would be

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1 material to a borrower. I previously explained the meaning of  
2 "material," and you should apply those instructions here.

3 So that completes the 14 counts. You will go through  
4 the verdict sheet in the order in which the questions are  
5 presented. And, basically, it has each of the 14 counts  
6 listed, and then under each of them, the name of each of the  
7 defendants and a spot for you to check guilty or not guilty.  
8 That's what the verdict sheet consists of.

9 Once you complete the verdict sheet as to questions 1  
10 through 14, there is an additional question. If, but only if,  
11 you have found any defendant guilty on any of the Counts Two  
12 through Four, you should respond to the following question on  
13 the verdict form: "Has the government proven beyond a  
14 reasonable doubt that, at the time of collection of any of the  
15 loans you found as the basis for a guilty verdict on Counts Two  
16 through Four, the lender, in fact, was defendant Scott Tucker  
17 or an entity owned or controlled by him?" You are to answer  
18 that question "Yes" or "No."

19 For the purposes of this question, and solely on the  
20 issue of control, you should consider the following factors on  
21 the issue of control: whether Mr. Tucker was the source of  
22 funds for the loans, whether he bore the risk of non-repayment  
23 of the loans, and whether he had the power to direct the  
24 activities of the entity, including day-to-day operations,  
25 finances, lending decisions, distribution of profits, hiring

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1 and termination of employees, advertising and solicitation of  
2 customers, and banking and other third-party relationships.

3 Venue. With respect to any count you are considering,  
4 the government, in addition to proving the essential elements  
5 of that charge, must also prove that at least one act in  
6 furtherance of the charge occurred in the Southern District of  
7 New York. This is called establishing venue. The Southern  
8 District of New York includes all of Manhattan and the Bronx,  
9 as well as Westchester, Rockland, Orange, Putnam, Dutchess and  
10 Sullivan Counties.

11 With respect to Counts One through Six and Counts Ten  
12 through Fourteen, this means that, with regard to each count,  
13 you must decide whether the crime charged in a particular  
14 count, or any act committed to further or promote the crime,  
15 occurred within the Southern District of New York.

16 With respect to money laundering counts charged in  
17 Counts Eight and Nine, venue is proper here in the Southern  
18 District of New York if you find that a financial or monetary  
19 transaction was conducted here, or if you find that the wire  
20 fraud charged in Count Six, or any act committed to further or  
21 promote the wire fraud charged in Count Six, occurred here, if  
22 the defendant participated in the transfer of the proceeds of  
23 the wire fraud from the Southern District of New York to where  
24 the financial or monetary transaction was conducted.

25 With respect to the conspiracy to commit money



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Charge

1 laundering charged in Count Seven, venue is proper here in the  
2 Southern District of New York if you find that venue is proper  
3 here for either Counts Eight or Nine, or if an act in  
4 furtherance of the conspiracy took place here.

5 Unlike the elements of the offenses which must be  
6 proven beyond a reasonable doubt, the government is only  
7 required to prove venue by a preponderance of the evidence. A  
8 preponderance of the evidence means that it is more probable  
9 than not that some act in furtherance of the crime you are  
10 considering occurred in this district.

11 A few concluding remarks.

12 The possible punishment of a defendant in the event of  
13 a conviction is not a proper consideration for the jury and  
14 should not, in any way, enter into or influence your  
15 deliberations. The duty of imposing sentence belongs to the  
16 Court and the Court alone. Your function is to weigh the  
17 evidence and to determine whether the defendant is or is not  
18 guilty upon the basis of evidence and the law.

19 Therefore, I instruct you not to consider possible  
20 punishment or punishment in any way in your deliberations.

21 You are about to go into the jury room to begin your  
22 deliberations. I will have exhibits actually received into  
23 evidence go into the jury room with you. They will come in in  
24 a few minutes.

25 With regard to the recordings, if you want to hear the

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Charge

1 recordings, we will have you come into the courtroom to play  
2 them.

3 If you want any testimony read back, please send out a  
4 note specifying what you want to hear and we will arrange  
5 either to have it read back in the courtroom or brought in to  
6 you. Please be as specific as possible in requesting portions  
7 of testimony. If you want any further explanation of the law  
8 as I have explained it to you, you may also request that.

9 Your requests for testimony -- in fact, any  
10 communication with the Court -- should be made in writing,  
11 signed by your foreperson, and given to the deputy marshal. In  
12 any event, do not tell me or anyone else how the jury stands on  
13 any issue. In other words, do not tell me or anyone else what  
14 the vote is until after a unanimous verdict is reached.

15 As I said, I am going to send in two copies of the  
16 indictment. That's only an accusation and it's not proof of  
17 anything. But you will have a copy of the indictment, you will  
18 have two copies of these jury instructions, and everyone will  
19 have a copy of the verdict sheet, although only one is signed  
20 and returned.

21 Some of you have taken notes during the trial. I want  
22 to emphasize that notes are simply an aid to memory. Notes  
23 that any of you have made may not be given any greater weight  
24 or influence in determining the case than the recollections or  
25 impressions of other jurors, whether from notes or memory, with

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1 respect to the evidence presented or what conclusions, if any,  
2 should be drawn from the evidence. Any difference between a  
3 juror's recollection and another juror's notes should be  
4 settled by asking to have the court reporter read back the  
5 transcript, for it is the court record rather than any juror's  
6 notes upon which the jury must base its determination of the  
7 facts and its verdict.

8 As I said, you will get the verdict form to record  
9 your verdicts. You should proceed through the questions on the  
10 verdict form in the order in which they are presented.

11 It is your duty as jurors to consult with one another  
12 and to deliberate with a view to reaching an agreement. Each  
13 of you must decide the case for himself or herself, but you  
14 should do so only after a consideration of the case with your  
15 fellow jurors, and you should not hesitate to change an opinion  
16 when convinced that it is erroneous. Your verdict must be  
17 unanimous, but you are not bound to surrender your honest  
18 convictions concerning the effect or weight of the evidence for  
19 the mere purpose of returning a verdict solely because of the  
20 opinion of other jurors. Discuss and weigh your respective  
21 opinions dispassionately, without regard to sympathy, without  
22 regard to prejudice or favor for either party, and adopt that  
23 conclusion that in your good conscience appears to be in  
24 accordance with the evidence and the law.

25 Please remember, you are not partisans. You are

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Charge

1 judges -- judges of the facts -- not representatives of a  
2 constituency or a cause.

3 Again, each of you must make your own decision about  
4 the proper outcome of the case based on your consideration of  
5 the evidence and your discussions with your fellow jurors. No  
6 juror should surrender his or her conscientious beliefs solely  
7 for the purpose of returning a unanimous verdict. If at any  
8 point you find yourselves divided, do not inform the Court or  
9 anyone of how the jurors are split. Once you have reached a  
10 verdict, do not announce what the verdict is until I ask you to  
11 do so in the courtroom.

12 Once you get into the jury room, you may select a  
13 foreperson who will be responsible for signing all  
14 communications to the Court on behalf of the jury and for  
15 handing them to the deputy marshal during your deliberations.  
16 This should not be understood to mean that an individual cannot  
17 send the Court a note should the foreperson refuse to do so.

18 I will give you the typed text of these instructions,  
19 as I said, but it's possible that there is a slight variance  
20 between the words I have spoken and the typed text that I will  
21 give you. It is the words I have spoken that control if you  
22 find any variance.

23 After you have reached a verdict, your foreperson will  
24 advise the deputy marshal outside your door that you have  
25 reached a verdict.

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1 I will stress that each of you must be in agreement  
2 with the verdict that is announced in court. Once your verdict  
3 is announced by your foreperson in open court and officially  
4 recorded, it cannot ordinarily be revoked.

5 Your function now is to weigh the evidence in this  
6 case and to determine whether the government has or has not  
7 proven the guilt of defendants Scott Tucker and Timothy Muir  
8 beyond a reasonable doubt with respect to each of the 14 counts  
9 in the indictment.

10 You must base your verdict solely on the evidence or  
11 lack of evidence in this case and these instructions as to the  
12 law, and you are obligated under your oath as jurors to follow  
13 the law as I have instructed it, whether you agree or disagree  
14 with the particular law in question. I am sure that if you  
15 listen to the views of your fellow jurors and if you apply your  
16 own common sense, you will reach a verdict in accordance with  
17 the evidence and the law.

18 Finally, let me state that your oath sums up your  
19 duty, and that is, without fear or favor to anyone, you will  
20 well and truly try the issues, based solely upon the evidence  
21 and this Court's instructions as to the law.

22 Ladies and gentlemen, this concludes my instructions.  
23 You may stand up and stretch while I meet with the lawyers at  
24 the sidebar, and please do not discuss the case until you're  
25 inside the jury room.

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Charge

1 (At the sidebar)

2 THE COURT: From the government.

3 MR. SCOTTEN: Nothing, your Honor.

4 THE COURT: From Mr. Tucker.

5 MR. GINSBERG: Nothing, your Honor.

6 THE COURT: From Mr. Muir.

7 MR. BATH: No, sir.

8 THE COURT: What I am going to do is instruct the  
9 alternates that they are still on jury duty. They cannot  
10 discuss the case among themselves or with anyone, follow my  
11 instructions. They are subject to recall.

12 All right. That's about it.

13 You can return to your seats.

14 (In open court)

15 THE COURT: Ladies and gentlemen, I should tell you  
16 that during deliberations, if someone steps out of the room for  
17 any reason, you cannot deliberate unless all the jurors are  
18 present. So, for example, if you decide to take a few minutes  
19 to step out of the jury room, then you suspend your  
20 deliberations, unless and until everyone is present.

21 If the jury has not reached a verdict, I will call you  
22 back in around five minutes to 5 tonight. All right.

23 At this point, with regard to Cecilia Rosa, Nuria  
24 Cornielle, and Glenn Stockton, you are not excused from this  
25 jury as of yet. It is possible under the law that you could be

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1 called back to participate in deliberations. So for that  
2 reason, until this jury has reached a verdict, you are still on  
3 jury duty and subject to recall. You still must follow the  
4 instructions that I have given you about not discussing the  
5 case among yourselves or with anyone, not doing any research,  
6 not doing any investigation, because you may be recalled. I  
7 will promise you, however, that when and if the jury reaches a  
8 verdict, Flo, my deputy, will give you a call at the phone  
9 number that you have given her to let you know what the verdict  
10 is, and also to let you know that you are relieved of this  
11 obligation not to discuss the case.

12 So with great admiration to you for your hard service,  
13 your being here, your paying attention, being good-spirited and  
14 good-natured, I am going to allow you at this point to return  
15 to the jury room to gather your belongings and to depart.

16 So, again, your service is most admirable. You should  
17 be proud of what you have done, and you have my appreciation  
18 and my admiration. Thank you.

19 Please leave your notebooks in the jury room.

20 (Alternate jurors exit courtroom)

21 THE COURT: I ask the deputy marshal to step forward  
22 to take the oath.

23 Please come into the well.

24 (Marshal sworn)

25 THE COURT: Ladies and gentlemen, you may now discuss

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1 the case among yourselves.

2 Thank you.

3 (At 11:07 a.m., the jury retired to deliberate)

4 THE COURT: Please be seated.

5 Let me begin by saying that this case was actually a  
6 pleasure to preside over because it was so well presented by  
7 the lawyers on both sides. The openings and closings, the  
8 directs, the crosses, were a pleasure to watch, and I saw some  
9 very fine lawyering in this courtroom, which is always  
10 especially enjoyable. And I realize that this case, like many  
11 trials, but probably more so than most trials, what goes on in  
12 the courtroom is the tip of the iceberg, because of the number  
13 of charges, the number of documents, etc., the amount of  
14 preparation on both sides was extraordinary. You have worked  
15 long and hard on this case, over a considerable period of time,  
16 and you have my eternal respect.

17 Each of the lawyers in this case, Mr. Scotten, Mr.  
18 Velamoor, Mr. Ravi, Mr. Ginsberg, Mr. Roth, Mr. Bath, and their  
19 colleagues and associates, are all welcome in this courtroom in  
20 the future. I thought everyone conducted themselves consistent  
21 with the highest aspirations of this profession. I really do.  
22 And in a long trial it's possible that things can get difficult  
23 or tense at times, but I thought everybody acted in a  
24 professional manner. And my thanks and respect also go to Ms.  
25 Limani, also for her hard work in this case.



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1 I make no apologies for being the traffic cop in this  
2 case. That's what I get a paycheck for doing. That's what my  
3 job is. We all have a role. My role is not to be your best  
4 friend. My role is to do what I need to do, and I make no  
5 apologies for it, but I just assure you that if anybody at any  
6 time ever had a wounded ego or bruised feelings, you shouldn't.  
7 It's just part of what a trial judge needs to do to keep a case  
8 moving because, as you know, I am obsessed with the people in  
9 the jury box. I am obsessed with not having their time wasted  
10 and that the case goes in in a reasonably smooth fashion  
11 without imposing on their time.

12 Now, let me turn to a couple of housekeeping things.  
13 I subscribe to what I call an eight-minute rule, which is you  
14 have to be able to get back to this courtroom within eight  
15 minutes. That means if you're a prosecutor, you can't go back  
16 to your office, or a defense counsel. There isn't going to be  
17 enough time to get back here in eight minutes. You have to  
18 make sure that you're in contact with Flo, and there should be  
19 someone from each team who is in the courtroom or extremely  
20 nearby. So if we get a note, I am going to have it shown to  
21 you and I am going to get you working on the note.

22 If it's a readback, what you are going to do is you  
23 are going to go through the transcript and you are going to  
24 figure out what you think is appropriate, see whether you can  
25 agree on it, and then we will have the court reporters prepare

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1 a redacted transcript, and by redacted, there is colloquy at  
2 the sidebar that comes out, if there is an objection sustained,  
3 the question and answer will come out, that sort of thing. And  
4 then I will come down, supervise the process, and we will send  
5 the transcript into the jury room.

6 I am going to require that both sides confer right now  
7 on the received exhibits, and you are going to tender them to  
8 my deputy, who is going to tender them to the deputy marshal to  
9 be brought into the jury room. And you heard what I said about  
10 the recordings, how we will deal with that.

11 Thank you all very much.

12 MR. SCOTTEN: Thank you, your Honor.

13 MS. LIMANI: Thank you, your Honor.

14 (Recess pending verdict)

15 (Jury not present)

16 THE COURT: So I have two notes from the jury, which  
17 have been shared with counsel.

18 Court Exhibit 22: "Judge, can we get Tim Muir's  
19 transcript, please, October 11, during cross-examination, when  
20 he stated that he knew that the interest rates were too high."

21 Note number 23: "Can we have the transcripts for the  
22 recordings, please."

23 I gather the parties have clipped pages 2901 through  
24 2903, is that correct?

25 MR. VELAMOOR: Judge, I think both parties agree that

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1 the jury should be provided with testimony beginning on  
2 2901:12. So line 12 on page 2901. There is a disagreement as  
3 to the end point.

4 THE COURT: What is the position of the government?

5 MR. VELAMOOR: Our position is that the jury should be  
6 read back 2901, line 12, through 2902, line 16.

7 THE COURT: And what is the position of the  
8 defendants?

9 MR. BATH: We believe it should end at 2903, line 9.

10 THE COURT: Just give me a moment, please.

11 Starting point on 2901 again, which line?

12 MR. VELAMOOR: Line 12.

13 THE COURT: You want to end it where, Mr. Bath?

14 MR. BATH: 2903, line 9.

15 THE COURT: And the government wants to end it at?

16 MR. VELAMOOR: 2902:16.

17 THE COURT: I am going to agree with Mr. Bath.

18 Ordinarily, my preference would be to send this into  
19 the jury room. I am going to have the court reporter read it,  
20 2901, line 12, through 2903, line 9.

21 MR. VELAMOOR: We ask, if the Court is inclined to  
22 include more, we would ask that it at least go through 2903:21  
23 to complete that exchange.

24 First of all, we are disagreeing with Mr. Muir over  
25 the question and whether or not the exchange continues.

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1           And finally, it resolves with him acknowledging the  
2 New York attorney general's position.

3           THE COURT: Through what, line 21?

4           MR. VELAMMOOR: Which was ultimately the question.

5           THE COURT: I think that's right. If I am going to  
6 include down to line 9, then I think it's fair to include down  
7 to line 21.

8           Any objection, Mr. Bath?

9           MR. BATH: I am reviewing that right now.

10          I disagree with that position, Judge.

11          THE COURT: In other words, you want the jury to know  
12 what Mr. Muir's position was, but not the position of the  
13 statutory officer enforcing the New York statute.

14          MR. BATH: I don't read it that way. The question  
15 posed about New York was that was the position in New York. I  
16 guess you can read that to be the AG's position or it could be  
17 the position of New York under the law. I am reading it as  
18 it's the New York law, not the AG. When the government  
19 transitions to the AG, that's a different topic. That's my  
20 analysis.

21          THE COURT: Here's the thing. I think it's a close  
22 question. The government may be right that the readback should  
23 end at 2902:16. But if I am going to go through 2903:9, the  
24 Court says to Mr. Muir, "That was certainly the position of New  
25 York, right? And you can say yes, it was, no it wasn't, but

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1 you can't disagree with the question." And he says, "Then I  
2 say no, it wasn't." And apparently he acknowledged later on  
3 that he knew that it was the position of the attorney general  
4 of New York, that it was their position.

5 MR. BATH: I understand that, Judge. If I could have  
6 just second one.

7 THE COURT: Sure.

8 MR. BATH: We will take it all, then.

9 THE COURT: That's fine.

10 MR. BATH: Could I also make an additional request? I  
11 would ask then that Mr. Muir's questioning by me on redirect,  
12 in response to cross-examination, also be read back to the  
13 jury.

14 THE COURT: I am going to decline to do that because  
15 the jury was very specific about what they wanted. If they had  
16 said, I want the testimony on a particular subject, I would  
17 have given them the direct, the cross and the redirect, but  
18 that's not what they asked for. So thank you.

19 Bring our jury in, please.

20 MR. VELAMOOR: There is a second note I believe.

21 THE COURT: The second note, Court Exhibit 23, "Can we  
22 have the transcripts for the recordings, please."

23 Any objection?

24 MR. VELAMOOR: I believe there is, not from us, but  
25 there is an objection from defense.

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1 MR. GINSBERG: The transcripts are not in evidence.  
2 That's the problem.

3 THE COURT: They are an aid to recollection. I will  
4 remind them that it is the recordings that are the evidence.  
5 The transcripts are an aid to listening to the tapes and if  
6 they want to listen to the tapes, they can.

7 However, this jury has listened to the tapes, with the  
8 transcript in front of them as an aid to listening, and if this  
9 is what they want, so long as they understand the limitation of  
10 the transcript, it seems appropriate.

11 THE COURT: OK. Bring our jurors in, please.

12 (Jury present; time noted: 2:28 p.m.)

13 THE COURT: Good afternoon.

14 Could the foreperson please raise their hand.

15 Excellent.

16 I have the two notes. I am going to ask you going  
17 forward, remember to sign the note for us. Thank you.

18 So with regard to the first note, "Judge, can we get  
19 Tim Muir's transcript, please, October 11, during  
20 cross-examination, when he stated that he knew that the  
21 interest rates were too high."

22 I am going to ask our court reporter to please read  
23 back that portion of the cross-examination.

24 (Record read)

25 THE COURT: There is a second note which reads, "Can

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1 we have the transcripts for the recordings, please."

2 Now, ladies and gentlemen, as you remember, I know you  
3 know this, the recordings themselves are the evidence, the  
4 transcripts are an aid to listening to the tapes. I will allow  
5 you to take the transcripts back to the jury room with you, as  
6 long as you understand that instruction, and it's your  
7 recollection of what you heard on the tapes that controls.

8 All right. With that, thank you, ladies and  
9 gentlemen.

10 (Jury resumes deliberations; time noted: 2:35 p.m.)

11 THE COURT: Thank you.

12 MR. VELAMOOR: Judge, it looks like some of them took  
13 their binders, some didn't. Should we just leave it at their  
14 choice?

15 THE COURT: Absolutely.

16 So the record is clear, the binders have remained at  
17 the jurors' seats in the courtroom since they were first made  
18 available to the jurors quite some time ago. And just now,  
19 after my instruction, a couple of jurors took binders back with  
20 them. It looks like, I can't see for sure, but several jurors,  
21 I see at least three, who did not. There may have been more  
22 than that. I just may not be able to see the angles. So be  
23 it.

24 (Recess pending verdict)

25 THE COURT: The note has been shown to counsel, I am

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1     advised.  It's been marked as Court Exhibit 24.

2             "Hello, Judge.  Can you give further clarification on  
3     what collection of unlawful debt means?"  Collection of  
4     unlawful debt is in quotes.  "Still unclear to us."

5             "Also, can you provide more clarification on elements  
6     four and five of Counts Two."  It says "Counts Two," and then  
7     it says "(2-4)."  So I think they are talking about elements  
8     four and five of Counts Two through Four, is the way I  
9     interpret it.

10            So let me hear what the government has to say, and  
11     then I will hear what the defendants have to say.

12            MR. SCOTTEN:  Your Honor, I think we are broadly in  
13     agreement that, given that the jury's request is not that  
14     specific yet, the Court should reread its instructions in these  
15     areas.

16            I think we are also agreed that for elements four and  
17     five of Counts Two through Four, the Court should reread those  
18     elements in their entirety, which are on pages 33 through 35,  
19     and they are clearly labeled in the Court's instructions as  
20     those elements.

21            With respect to unlawful debt, there is no definition  
22     we are aware of given for "collection of."  But the Court  
23     defines unlawful debt, which we at least imagine is the  
24     contentious part, pretty thoroughly.

25            The parties are also agreed that that definition



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1 begins on page 29 of the Court's instructions, at the bottom of  
2 the page, in the last paragraph, beginning with the second  
3 sentence of that paragraph, "For purposes of this case, an  
4 unlawful debt," and then the Court goes on.

5 The government would ask the Court to read what we  
6 think is the entirety of its definition, since the jury's  
7 question is pretty vague and general, that we believe runs to  
8 page 31, ending at the end of sort of the first paragraph that  
9 carries over. So ending "to make such loans, not continuing on  
10 where it says "the focus of this sixth element."

11 THE COURT: Let me understand your position. Let's  
12 see now.

13 Let me hear the defendants' position.

14 MR. GINSBERG: We agree with the government on the  
15 first issue, your Honor, elements four and five.

16 THE COURT: That I should read the entire instruction  
17 on four and five again, is that what you mean by that?

18 MR. GINSBERG: Yes.

19 THE COURT: All right.

20 MR. GINSBERG: On the second question, we believe  
21 that --

22 THE COURT: The second question is elements four and  
23 five on Counts Two through Four.

24 So the first question, go ahead.

25 MR. GINSBERG: The first question, we believe that

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1 your Honor should read the last paragraph on page 29, starting  
2 where it says, "For purposes of this case, an unlawful debt,"  
3 and end at the top of page 30, where it says "under state law."  
4 We think the rest of it is not what the jury is asking, the  
5 specific rates in each state.

6 THE COURT: Let me hear from Mr. Bath.

7 MR. BATH: Not being familiar with your Honor's  
8 procedure, I don't why the Court couldn't maybe just refer them  
9 to those pages. They can read. We have given these  
10 instructions. I understand that they are asking for more  
11 clarification. I'm not sure just reading it again to them  
12 versus just telling them they can read whatever pages, or just  
13 refer them back generally to the instructions, I don't know  
14 that we are clarifying it. Maybe that makes us feel like we  
15 are answering their question, but I'm not sure we are. I would  
16 just ask that you tell them they have got the instructions, and  
17 refer them back to the instructions they have.

18 THE COURT: Thank you.

19 The one point where I am not in agreement with either  
20 side is -- the question reads, "Can you give further  
21 clarification on 'collection of unlawful debt' means. Still  
22 unclear to us."

23 I think the jury sees the world slightly different  
24 than a bunch of lawyers, and maybe even a judge who has been  
25 sitting here for several weeks. I am reading something into

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1 the word "collection" of. That's one thing that the trial  
2 evidence didn't really focus on a whole lot.

3 I think I agree with the defendants that with regard  
4 to the unlawful debt portion, it's beginning on the bottom, the  
5 last carry-over paragraph on 29 up to that carry-over sentence  
6 at the top of 30. That's unlawful debt.

7 I would say, lawmakers did not make the making of a  
8 loan the federal crime. The federal crime is the collection  
9 of -- making an unlawful debt the federal crime. The federal  
10 crime is the collection of the unlawful debt. And then say,  
11 unlawful debt is as defined here, and I am kind of indifferent  
12 whether I read them the instructions again or I hand it to  
13 them. But I think that the question calls for focus on the  
14 word "collection," which is to be given its ordinary and  
15 customary meaning. It's not a term of art.

16 The point being the making of a loan is not the crime,  
17 as Congress and lawmakers have framed this statute, it is the  
18 collection of the unlawful debt. That's the way I read the  
19 plain language of the statute, and I think -- I may be wrong, I  
20 may be overreading the question, but I don't want to under-read  
21 it and I don't want to overread it. So that's what I propose  
22 to say.

23 Any objection from the government?

24 MR. SCOTTEN: We agree with the Court's reading. We  
25 are just being very cautious to expand, but no objection.

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1 THE COURT: Mr. Ginsberg.

2 MR. GINSBERG: We would stand on our previous  
3 position, your Honor.

4 THE COURT: Mr. Bath.

5 MR. BATH: We have no objection.

6 THE COURT: So bring our jury in, please.

7 The pages, again, on the fourth and fifth element are  
8 where?

9 MR. SCOTTEN: 33 to 35, your Honor.

10 THE COURT: Thank you.

11 (Jury present; time noted: 3:20 p.m.)

12 THE COURT: Thank you, ladies and gentlemen.

13 So I have the note which reads, "Hello, Judge." And I  
14 say, hello, jury.

15 "Can you give further clarification on what  
16 'collection of unlawful debt' means? Still unclear to us."

17 Let me turn to that portion before I turn to the  
18 second question on there.

19 Congress and lawmakers made it a crime and made it  
20 unlawful for any person, through collection of an unlawful  
21 debt, through an enterprise engaged in or the activities of  
22 which affect interstate commerce.

23 Actually, I am saying that incorrectly. Let me start  
24 from the beginning because what I just said to you is wrong,  
25 and I want to make sure I get it right.

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1           So the law is that it shall be unlawful for any  
2 person, employed by or associated with any enterprise, engaged  
3 in or the activities of which affect interstate or foreign  
4 commerce, to conduct or participate, directly or indirectly, in  
5 the conduct of such an enterprise through the collection of  
6 unlawful debt.

7           So you notice that the way that reads, it's not the  
8 making of the loan that is the crime; it's the collection of  
9 the unlawful debt.

10          Now, what is an unlawful debt? It's defined on the  
11 bottom of page 29 and up to the top of page 30 of the  
12 instructions.

13          For the purposes of this case, an unlawful debt means  
14 a debt that is unenforceable under state law because of the  
15 laws relating to usury -- and I explained what usury is  
16 elsewhere -- and which was incurred in connection with the  
17 business of lending money at a rate usurious under state law,  
18 where the usurious rate is at least twice the enforceable rate  
19 under state law.

20          Now, you look at the instructions, there is an example  
21 given, that may or may not be useful to you, but that's the  
22 definition of unlawful debt. And it's the collection of an  
23 unlawful debt which is rendered unlawful, when the other  
24 elements of the crime are met. By just focusing on that  
25 element, I don't want you to ignore the other elements that I

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1 charged you on for Count One and for Counts Two through Four.

2 Now, the second part of your question is, "Can you  
3 provide more clarification on elements four and five of Counts  
4 Two" -- I read this to mean Counts Two through Four.

5 So the fourth element the government must prove with  
6 respect to Counts Two through Four is that the defendant  
7 willfully and knowingly engaged in the collection of an  
8 unlawful debt. Willfully, knowing and unlawfully have the same  
9 meaning on which I have instructed you previously.

10 For each of Counts Two, Three and Four, the indictment  
11 alleges five specific unlawful debts that the defendants are  
12 alleged to have engaged in collecting. The government does not  
13 need to prove the existence of two or more collections of  
14 unlawful debt forming a pattern. Rather, each individual  
15 instance of collection of an unlawful debt is a separate  
16 substantive crime.

17 So on each of the counts, you have to unanimously  
18 agree that there was at least -- these are the substantive  
19 counts -- that there was at least one unlawful debt that the  
20 defendant who you are considering willfully and knowingly  
21 engaged in the collection of. And you must unanimously agree  
22 that the government has proven beyond a reasonable doubt that  
23 the defendant engaged in collecting at least one particular  
24 debt named in a count before you may convict the defendant of  
25 that count. In other words, it's not good enough if half of

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1 you think it was this particular debt and the other half of you  
2 think it was a different debt. You all have to agree on at  
3 least one unlawful debt and the collection of one unlawful debt  
4 under that count.

5 The fifth element the government must prove with  
6 respect to Counts Two through Four is that the defendant  
7 conducted or participated in the conduct of the affairs of the  
8 Tucker payday lending organization, directly or indirectly,  
9 through the collection of unlawful debt.

10 It is not enough that there be an enterprise and that  
11 the defendant engaged in the collection of unlawful debt. More  
12 is required. There must be a meaningful connection between the  
13 defendant engaging in the collection of unlawful debt and the  
14 affairs of the enterprise. The defendant must have conducted  
15 or participated in the enterprise by collecting or aiding in  
16 the collection of unlawful debt. It is not necessary, however,  
17 that the collection of unlawful debt directly further the  
18 enterprise's activities. It is enough that the defendant's  
19 collection of unlawful debt was related to the enterprise's  
20 activities.

21 The fifth element also requires that the defendant  
22 have some role in the operation, direction or management of the  
23 enterprise. To conduct or participate in the conduct of the  
24 enterprise means the defendant must have played some part in  
25 the operation or management of the enterprise. The government

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1 is not required to prove that the defendant was a member of  
2 upper management, and an enterprise is operated not only by  
3 those in upper management, but also those lower down in the  
4 enterprise who act under the direction of upper management. It  
5 is sufficient if you find that the defendant provided  
6 substantial assistance to those who conducted the enterprise,  
7 and thereby was involved in playing a part in the direction of  
8 the affairs of the enterprise through collection of unlawful  
9 debt.

10 Thank you, ladies and gentlemen. You may return.

11 (Jury resumes deliberations; time noted: 3:30 p.m.)

12 THE COURT: Anything further?

13 MR. SCOTTEN: No, your Honor.

14 THE COURT: We are adjourned. Thank you.

15 (Recess pending verdict)

16 THE COURT: I have an envelope that I understand came  
17 in at 4:10 p.m., and I have been advised that it's the jury's  
18 verdict.

19 Please bring our jury in.

20 (Jury present; time noted: 4:22 p.m.)

21 THE COURT: Madam foreperson, I have an envelope here.  
22 Does this contain the jury's verdict?

23 THE FOREPERSON: It does.

24 THE COURT: Is it signed and dated by you?

25 THE FOREPERSON: Yes.



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1 THE COURT: Is the verdict unanimous?

2 THE FOREPERSON: Yes.

3 THE COURT: All right.

4 Madam Deputy, if you will return this to the  
5 foreperson and take the jury's verdict.

6 If you'd please stand.

7 THE DEPUTY CLERK: As to Count One: Conspiracy to  
8 collect unlawful debts.

9 As to Scott Tucker, guilty or not guilty?

10 THE FOREPERSON: Guilty.

11 THE DEPUTY CLERK: Timothy Muir, guilty or not guilty?

12 THE FOREPERSON: Guilty.

13 THE COURT: Count Two: Collection of unlawful debts  
14 (Ameriloan, United Cash Loans and US FastCash).

15 As to Scott Tucker.

16 THE FOREPERSON: Guilty.

17 THE DEPUTY CLERK: As to Timothy Muir.

18 THE FOREPERSON: Guilty.

19 THE DEPUTY CLERK: Count Three: Collection of  
20 unlawful debts (500 FastCash).

21 As to Scott Tucker.

22 THE FOREPERSON: Guilty.

23 THE DEPUTY CLERK: Timothy Muir.

24 THE FOREPERSON: Guilty.

25 THE DEPUTY CLERK: Count Four: Collection of unlawful

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1 debts (One Click Cash).

2 As to Scott Tucker.

3 THE FOREPERSON: Guilty.

4 THE DEPUTY CLERK: Timothy Muir.

5 THE FOREPERSON: Guilty.

6 THE DEPUTY CLERK: Count Five: Conspiracy to commit  
7 wire fraud.

8 As to Scott Tucker.

9 THE FOREPERSON: Guilty.

10 THE DEPUTY CLERK: As to Timothy Muir.

11 THE FOREPERSON: Guilty.

12 THE DEPUTY CLERK: Count Six: Wire fraud.

13 As to Scott Tucker.

14 THE FOREPERSON: Guilty.

15 THE DEPUTY CLERK: Timothy Muir.

16 THE FOREPERSON: Guilty.

17 THE DEPUTY CLERK: Count Seven: Money laundering  
18 conspiracy.

19 As to Scott Tucker.

20 THE FOREPERSON: Guilty.

21 THE DEPUTY CLERK: Timothy Muir.

22 THE FOREPERSON: Guilty.

23 THE DEPUTY CLERK: Count Eight: Promotion money  
24 laundering.

25 As to Scott Tucker.

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1 THE FOREPERSON: Guilty.

2 THE DEPUTY CLERK: Timothy Muir.

3 THE FOREPERSON: Guilty.

4 THE DEPUTY CLERK: Count Nine: Concealment money  
5 laundering.

6 Scott Tucker.

7 THE FOREPERSON: Guilty.

8 THE DEPUTY CLERK: Timothy Muir.

9 THE FOREPERSON: Guilty.

10 THE DEPUTY CLERK: Count Ten: False Truth in Lending  
11 Act disclosures (Ameriloan).

12 Scott Tucker.

13 THE FOREPERSON: Guilty.

14 THE DEPUTY CLERK: Timothy Muir.

15 THE FOREPERSON: Guilty.

16 THE DEPUTY CLERK: Count Eleven: False Truth in  
17 Lending Act disclosures (United Cash Loans).

18 Scott Tucker.

19 THE FOREPERSON: Guilty.

20 THE DEPUTY CLERK: Timothy Muir.

21 THE FOREPERSON: Guilty.

22 THE DEPUTY CLERK: Count Twelve: False Truth in  
23 Lending Act disclosures (US FastCash).

24 Scott Tucker.

25 THE FOREPERSON: Guilty.

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1 THE DEPUTY CLERK: Timothy Muir.

2 THE FOREPERSON: Guilty.

3 THE DEPUTY CLERK: Count Thirteen: False Truth in  
4 Lending Act disclosures (500 FastCash).

5 Scott Tucker.

6 THE FOREPERSON: Guilty.

7 THE DEPUTY CLERK: Timothy Muir.

8 THE FOREPERSON: Guilty.

9 THE DEPUTY CLERK: Count Fourteen: False Truth in  
10 Lending Act disclosure (One Click Cash).

11 Scott Tucker.

12 THE FOREPERSON: Guilty.

13 THE DEPUTY CLERK: Timothy Muir.

14 THE FOREPERSON: Guilty.

15 THE DEPUTY CLERK: Has the government proven beyond a  
16 reasonable doubt that, at the time of collection of any of the  
17 loans you found as the basis for a guilty verdict on Counts Two  
18 through Four, the lender, in fact, was defendant Scott Tucker  
19 or an entirety owned or controlled by him?

20 Yes or no.

21 THE FOREPERSON: Yes.

22 THE COURT: All right. Thank you, Madam Foreperson.  
23 Madam Deputy, if you would please poll the jury.

24 (Jury polled; each juror answered in the affirmative)

25 THE DEPUTY CLERK: The jury has been polled.

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1 THE COURT: Any objection to my discharging the jury?

2 MR. VELAMMOOR: No, your Honor.

3 MR. GINSBERG: No, your Honor.

4 MR. BATH: No, sir.

5 THE COURT: Ladies and gentlemen, there was a judge  
6 who sat on this court from 1950 to 1988. His name was Edward  
7 Weinfeld, and he had a very peculiar custom. At the end of a  
8 jury trial, he would say to the jurors, "I will not thank you."  
9 Everybody thought this was odd till he went on to speak.  
10 Because to thank you is to cheapen what you have done. You  
11 have come here as citizens of the United States. You were  
12 called upon to serve, and you came and you served, and your  
13 service was long and it was hard.

14 You are people who quite possibly would never have met  
15 one another had you not been called to sit on this jury. You  
16 came. You came and you worked hard. You came when you were  
17 asked. You arrived on time. You got back from lunch on time.  
18 You didn't complain. You served. This is something you can be  
19 proud of for the rest of your lives. And every word I say to  
20 you I would say to you even if your verdict was very different  
21 than the one you returned. I am indifferent to what your  
22 verdict is. But I am in awe of your service, important  
23 service, hard service, difficult service. You know that, and I  
24 know that.

25 It's hard not just because it's difficult sitting and

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1 listening to problems that you're not involved in, but it's  
2 difficult also because it's draining on you, because you know  
3 that the stakes are high for all concerned. That's part of  
4 what makes it difficult. But you're willingness to come and  
5 serve keeps our American judicial system, our jury system,  
6 alive, and years from now you can look back on this with great,  
7 great pride.

8 Now, we are coming into the fall holiday season. You  
9 are going to be at Thanksgiving parties and the like, and it's  
10 going to come to pass that you will encounter someone who you  
11 know, maybe a friend, maybe a cousin. I don't want you to be  
12 mean to anybody, but I want you to think back on your service,  
13 and if this friend or cousin tells you how they plan to beat  
14 their way out of jury service, I want you to think of me, I  
15 want you to think of your own service, and in a very kind way  
16 let them know that you don't think that's funny. It's not any  
17 funnier than somebody saying, I just cheated on my income tax,  
18 or I stole, or I did something else that was wrong.

19 You see, if we didn't have juries, I want you to think  
20 of how it would work in this country. We would have men and  
21 women who wear black robes deciding guilt or lack of guilt in a  
22 case like this. And no matter how fair that judge tried to be,  
23 or was in fact, there would always be lingering questioning in  
24 somebody's mind. Who is that judge? Who appointed him or her?  
25 Where did they grow up? What was their life about? What

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1 prejudices do they hold? But when you have a system of twelve  
2 people, from all walks of life who, as I said before, never  
3 would have met one another, and they come together and act as a  
4 jury, they act in unison, it's as fair as we are going to get  
5 in this very imperfect world that we live in. And you have  
6 been the ones who acted together, consistent with your oath.

7           So one other point. I have told you all along, you're  
8 free to talk about the case. One piece of advice I am going to  
9 give you, one comment I will make, is some jurors who have  
10 served in this courthouse have decided on their own to follow a  
11 rule, and the rule goes like this. They will tell everybody  
12 about what happened in the courtroom, they will tell them what  
13 the outcome of the case was, they will tell them about the  
14 wonderful judge who presided in the case, or the not so  
15 wonderful judge who presided in the case, about the lawyers,  
16 about the deputy, about the witnesses. But the one thing they  
17 won't speak about is what goes on in the jury room between  
18 their fellow jurors, because that is something very personal  
19 and something very private. You can do what you want, but  
20 that's a rule that you may want to consider following, keeping  
21 that to yourself and your fellow jurors.

22           Now, life is strange and it may come to pass that we  
23 cross paths again. Maybe on the subway. I don't know where it  
24 will be. But if that should come to pass, I hope you will  
25 please remind me of where we first came to know one another.

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1           So, ladies and gentlemen, with the utmost of  
2           admiration, you are discharged and you're free to go. Your  
3           service is complete.

4           (Jury excused)

5           THE COURT: Any applications?

6           MR. VELAMOOR: Yes, your Honor. We seek remand as to  
7           both defendants.

8           THE COURT: Let me hear the basis for your  
9           application.

10          MR. VELAMOOR: The basis is as follows.

11          First of all, as the Court knows, the burden is now  
12          shifted to both defendants to establish that they should remain  
13          on bail. We seek remand primarily based on a risk of flight.

14          Now, we recognize in making this application that both  
15          defendants have family ties here in this country, but we think  
16          this case is overcome by other factors. Specifically, as the  
17          Court knows, the crimes for which they were convicted are very  
18          serious. They carry substantial terms of incarceration. And  
19          they both have gone to trial with the expectation of being  
20          found not guilty, and, therefore, this is a significant change  
21          of circumstances in their minds.

22          I think it's also the case that the crimes were  
23          serious in terms of the lending activities, but as the Court  
24          knows from having presided over this trial, there were also  
25          crimes primarily of disobedience and disregard to courts, and a



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1 disregard of the ability of courts to control their activities,  
2 the legitimacy of courts in stopping them from engaging in  
3 activities that they thought they should be able to continue  
4 doing for years. In that capacity, they filed false affidavits  
5 in courts, they made false representations to courts. I think  
6 all of that conduct bears on a greater risk of flight.

7 There are also, I think, specific factors of which we  
8 would point to as to each of the defendants.

9 With respect to Mr. Tucker, in particular, we have  
10 frozen all the assets that we know about, but we don't believe,  
11 by any stretch of the imagination, we found all of the moneys  
12 that flowed to him from this conspiracy. So we think he has  
13 access to additional financing.

14 There is an episode that we have become aware of  
15 during the pendency of this case that adds to our concerns.  
16 Specifically, we learned, for example, that Mr. Tucker had a  
17 first-class flight from Kansas City to New York paid for by an  
18 associate of his Mr. Feingold, who we understand to be someone  
19 with a criminal record of his own. That he has access to  
20 financing from that individual, perhaps other individuals,  
21 furthers our concerns that this defendant continues to have  
22 access to money and financing that can be used to flee if he so  
23 desired.

24 THE COURT: What is his present bail conditions?

25 MR. VELAMMOOR: We will pull those up in a second.

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1 THE COURT: That's fine.

2 Go ahead. Talk about Mr. Muir.

3 MR. VELAMOOR: Concerning Mr. Muir, we understand that  
4 he has family here in the United States, but we also believe  
5 that he is not a citizen of this country at this point.  
6 Therefore, he unlike Mr. Tucker faces the risk of deportation  
7 after --

8 THE COURT: Say this again.

9 MR. VELAMOOR: Mr. Muir we understand not to be a  
10 citizen of this country, and therefore we believe faces the  
11 risk of deportation, based on the crimes for which he has been  
12 convicted, after completing service of any term of imprisonment  
13 that the Court imposes.

14 So for those reasons, we will pull up the bail  
15 conditions as soon as we can, but we believe --

16 THE COURT: I may be able to get them.

17 MR. VELAMOOR: So for these reasons, given the  
18 defendants' burden to prove by clear and convincing evidence  
19 that they are not a risk of flight, we don't think they could  
20 be meet that burden.

21 THE COURT: Let me look at the bail conditions.

22 It looks like, as to Mr. Muir, a \$400,000 bond, to be  
23 signed by February 23, 2016, cosigned by defendant's wife by  
24 March 5, 2016, secured by defendant and defendant's wife  
25 interest in Overland Park, Kansas. I assume residence.

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1 Surrender passport and make no new applications. Travel to  
2 District of Kansas, Western District of Missouri, Southern and  
3 Eastern Districts of New York.

4 As to Mr. Tucker, it looks like a \$2 million personal  
5 recognizance bond, to be signed by February 23, 2016, and  
6 cosigned by three financially responsible persons by March 5,  
7 and secured by property at 2405 West 114th Street, Leawood,  
8 Kansas, owned by defendant and his wife. Surrender passport  
9 and make no new applications. Travel restricted to the same  
10 districts as in the case of Mr. Muir. Defendant will not use  
11 any private plane, will transfer control and custody of any  
12 private plane to a third party acceptable to the government.

13 Now, I don't know whether there was any modification  
14 after that. I will ask defense counsel whether they are aware  
15 of any. And I will hear from Mr. Tucker's counsel.

16 MR. GINSBERG: First, your Honor, I'm not aware of any  
17 modifications from the time I entered the case.

18 I understand what the government's argument is.  
19 However, as your Honor heard during the course of this trial,  
20 and probably knew from pretrial motions, these proceedings,  
21 before even the criminal charges were brought, have been going  
22 on for a long time. Mr. Tucker was well aware, given the FTC  
23 lawsuit, and then the criminal indictment, that he faced the  
24 possibility of conviction. However the government wishes to  
25 frame what his beliefs were, it was his hope that he was not

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1 going to be found guilty.

2 He has travelled back and forth to New York, and other  
3 places that the Court permitted, on many occasions. He has a  
4 family. He has a wife and two children. His house is part of  
5 the bail package.

6 THE COURT: How old are the children?

7 MR. GINSBERG: 16 and 18, your Honor.

8 THE COURT: Go ahead.

9 MR. GINSBERG: He obviously attended all of the  
10 proceedings here and the trial knowing what the evidence was as  
11 it was being presented.

12 In terms of the two more specific allegations, that  
13 is, the government has some, I think at the moment, unfounded  
14 belief that he has assets that he could use if he remained out  
15 on bail, and I suppose they suggest by that that he could use  
16 to flee, not just this jurisdiction and Kansas, but the  
17 country. I don't know that there is any basis for that  
18 whatsoever. The government might have a belief, but I don't  
19 believe there is any evidence of that.

20 As to the one flight that was paid for by his friend  
21 and was a first-class ticket, whatever that amount of money  
22 was, the cost of a flight from Kansas to New York round-trip is  
23 far different from what kinds of financial resources Mr. Tucker  
24 or any defendant would need if he intended to leave the United  
25 States and to live elsewhere. Certainly, we have no reason to

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1 believe that that would happen, but even just looking at the  
2 financial factors, I don't believe that is a basis to change  
3 his bail conditions.

4           Beyond that, your Honor, the Court has the ability to  
5 add additional conditions to the current bail and modify it in  
6 a number of ways. The Court could order home confinement, the  
7 Court could order electronic monitoring and more regular  
8 reporting to pretrial services, and all kinds of things that I  
9 think would ensure the Court that he is being watched on a  
10 regular basis and would not have really the ability to flee. I  
11 am sure it's happened in the past, but I think your Honor could  
12 impose conditions that are stricter than they are now and would  
13 ensure his compliance with any new bail conditions.

14           But overall, your Honor, I think that the fact that  
15 this matter, the whole matter, that is, all of the allegations  
16 had been going on for such a long time, and that all during  
17 that period of time, frankly, even before the FTC decided to  
18 freeze his assets, if Mr. Tucker wanted to, he could have left  
19 the United States. He might have had more assets to take with  
20 him before they were frozen by the FTC. He had the ability to  
21 run up to this case.

22           I should also make the Court aware that prior to the  
23 charges being filed in this case, when Mr. Tucker had counsel,  
24 private counsel both in Kansas and in New York, there was a  
25 very long process, I am not sure exactly the amount of time,

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1 but months and months, if not more than a year, in which his  
2 lawyers engaged with the United States Attorney's Office in an  
3 effort to convince them not to bring charges. They were  
4 unsuccessful in doing that. They were told they were going to  
5 be unsuccessful in doing that. There was an initial indictment  
6 in this case, which charged only a few of the counts, then a  
7 superseding indictment was brought, and during that entire  
8 time, he continued to remain in the United States, and he  
9 continued to remain to obey the conditions of his bail.

10 THE COURT: The elephant in the room, of course, is  
11 that was at a point in time before he was convicted. He put on  
12 a substantial defense, and the jury has convicted him, and now  
13 the calculus changes.

14 MR. GINSBERG: That's always the case when there is a  
15 conviction, your Honor. I understand that. I don't think,  
16 however, that given the way that the statute is written, that  
17 the Court could not set additional conditions, modify the  
18 current bail in such a way as to ensure to the Court that Mr.  
19 Tucker will return, will not leave the country and will come  
20 back for his presentence interview and come back for his  
21 sentence.

22 I think that's particularly so, besides all the other  
23 things, I want to stress again his family. It's one thing if  
24 you have an individual who doesn't have a family, and whether  
25 they have a lot of money or a little money, they could take off

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1 and be on their own someplace else in the world. But when you  
2 have a wife and two children, I think that becomes much less  
3 likely that you would do that, for all the obvious reasons.

4 So I would urge your Honor to impose additional  
5 conditions on Mr. Tucker, such as those I had recommended and  
6 anything else your Honor believes would be appropriate, and I  
7 think that would ensure that he returns to court when required.

8 THE COURT: All right. Let me hear from Mr. Bath.

9 MR. BATH: Thank you, Judge.

10 Mr. Muir was born in -- there have been no  
11 modifications. Mr. Muir was born in Australia but has lived in  
12 the United States since 1978. I believe he is a lawful  
13 permanent resident, is the correct term. He of course is  
14 married. His wife Stephanie is a lawyer in Kansas City.  
15 Mr. Muir's mother lives in Kansas City. Stephanie's mother is  
16 from Kansas City. He has an eight-year-old daughter and a  
17 12-year-old stepdaughter at home. He has, frankly, like Mr.  
18 Ginsberg said, I think every reason to continue to comply with  
19 his bond conditions, to make sure he can go home and take care  
20 of his family and make sure arrangements are made anticipating  
21 that he could very well be going to prison.

22 I think, like Mr. Ginsberg said, I think there can be  
23 modifications made. Mr. Muir has shown up for every court  
24 appearance. He has made all of the appointments with  
25 presentence. They come and visit his house, etc., etc. I

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1 recognize the calculus has changed, but I think he has  
2 motivations and you have assurances that he will appear for all  
3 future court appearances.

4 THE COURT: I am going to allow the two defendants to  
5 remain free pending sentencing, and I am going to impose  
6 changed conditions: Home confinement with electronic  
7 monitoring and strict supervision.

8 This is not a situation where there will be  
9 modifications to go out of the home for employment purposes.  
10 It will be up to the discretion of the probation officer or  
11 pretrial services officer, but my expectation is the exceptions  
12 would be for any medical appointments or religious observances,  
13 and that's about it.

14 The other thing, I am asking my deputy to give me a  
15 date for sentencing, and I do not anticipate adjourning the  
16 date for sentencing. So that's the way this will be. So if  
17 the thought is that sentencing is going to get put off  
18 indefinitely while reports are going to be prepared,  
19 psychological reports, medical reports or the like, I don't  
20 anticipate that. So I am putting the cards face up on the  
21 table.

22 Let me give you a date for sentencing.

23 MR. GINSBERG: Your Honor.

24 THE COURT: One second, please.

25 MR. GINSBERG: I'm sorry.



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1 THE COURT: Yes, Mr. Ginsberg.

2 MR. GINSBERG: I was just going to ask your Honor  
3 about the time. I am sure your Honor is aware that usually  
4 completion of the probation report and things of that nature  
5 take these days at least 90 days or longer. So I would ask  
6 your Honor to consider putting the sentence off till late  
7 February or early March. I know I have a couple of commitments  
8 out of town in February. As your Honor said, you don't want to  
9 change the date. So I think that would be safer.

10 THE COURT: I have a sentencing date that I am going  
11 to set, and I am going to ask for an expedited report from  
12 probation.

13 Flo.

14 THE DEPUTY CLERK: January 5, 2018, for Mr. Muir at 2  
15 p.m., and for Mr. Tucker at 3 p.m.

16 THE COURT: Yes, sir.

17 MR. VELAMOOR: Just on the bail issue. My belief is  
18 that both defendants are being supervised out of the district  
19 of residence, which I think is Kansas.

20 THE COURT: Yes.

21 MR. VELAMOOR: I am assuming there is going to have to  
22 be some kind of coordination with the office there where they  
23 will impose these conditions. We have some concern as to how  
24 quickly and efficiently that is going to be done, especially  
25 since we are now on Friday afternoon. This intervening time

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1 period gives us great concern before the electronic monitoring  
2 is put in place. We don't know, frankly, what flights, when  
3 the defendants plan to return.

4 THE COURT: Let me find out.

5 When does Mr. Tucker plan to return?

6 MR. ROTH: For the record, Mr. Tucker has been here  
7 for the duration of the trial and hasn't gone back, and he was  
8 here two weeks before, so he has been here seven weeks. He  
9 will pack up his stuff and head out no later than Sunday. And  
10 I would indicate that there is correspondence. I met with  
11 pretrial here during the course of this trial last week. So  
12 they are in touch with Kansas people over there.

13 THE COURT: I am sure they are.

14 I am going to leave it to the assistant United States  
15 attorneys to be in touch with pretrial services to inform them  
16 of the bail modification and to get their assistance.

17 MR. VELAMOOR: That's fine. Can we also, perhaps,  
18 have a court deadline by which we could use to incentivize the  
19 office over there to impose the conditions, the electronic  
20 monitoring and home detention. We would also ask, even before  
21 that bracelet is put in place, that they remain in home  
22 detention.

23 THE COURT: The home confinement starts as of now.  
24 The electronic monitoring, that I would anticipate would be  
25 completed by Tuesday of next week.

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1 MR. VELAMMOOR: OK.

2 THE COURT: Existing bail conditions for Scott Tucker  
3 and Timothy Muir continue, with home confinement effective  
4 immediately and electronic monitoring to be implemented by  
5 pretrial services by October 17, 2017.

6 Anything further from the government?

7 MR. VELAMMOOR: Nothing further, your Honor.

8 THE COURT: Anything further from the defendants?

9 MR. BATH: Mr. Muir might go back tonight, planning to  
10 come back on Sunday. So I think we will stick with that plan.  
11 He will go home and he will be home, and I will work out  
12 getting everything back to Kansas City.

13 THE COURT: I have no objection to that.

14 Anything else?

15 All right. I don't think there is anything else to be  
16 said. I said what I said before the jury verdict after the  
17 jury was charged, and I certainly hope that the lawyers who  
18 worked so hard get some peace and reacquainted with their  
19 families.

20 We are adjourned.

21 (Trial concluded)